

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

FRANCISCO MENDOZA-GOMEZ,

Plaintiff,

v.

JASON BENNETT,

Defendant.

Case No. 2:24-cv-00743-RSM-TLF

ORDER TO SHOW CAUSE

This matter comes before the Court on Francisco Mendoza-Gomez's application to proceed in forma pauperis ("IFP") and proposed federal habeas corpus petition pursuant to 28 U.S.C. § 2241. Dkt. 1 (IFP motion), 1-1 (proposed federal habeas corpus petition). Petitioner is proceeding without representation. The petition has not been served on respondent.

It appears that the petition – on its face – is subject to dismissal. If the petition has not been exhausted, the IFP motion is premature. Court will provide petitioner the opportunity, by July 5, 2024, to show cause why the federal habeas corpus petition should not be dismissed.

DISCUSSION

Petitioner is in custody at Stafford Creek Correction Center. Dkt. 1. As the basis for his custody, he states that he is serving a sentence imposed on May 31, 2013, after having been convicted in King County Superior Court Case No. 12-1-00422-2. Dkt. 1-1

1 at 8. Petitioner raises one ground for review: he asserts a Fourteenth Amendment  
2 violation based on an unlawful seizure. Dkt. 1-2.

3 Under Rule 4 of the Rules Governing Habeas Corpus Cases (“Section 2254  
4 Rules”), the Court is required to perform a preliminary review of a habeas corpus  
5 petition. The Court should dismiss a habeas petition before the respondent is ordered to  
6 file a response, if it “plainly appears from the petition and any attached exhibits that the  
7 petitioner is not entitled to relief in the district court.” *Id.*

8 As an initial matter, petitioner filed this matter pursuant to 28 U.S.C. § 2241,  
9 however, as petitioner is “in custody pursuant to the judgment of a state court,” the relief  
10 petitioner seeks is not available under § 2241. 28 U.S.C. § 2254(a) “[W]hen a prisoner  
11 is in custody pursuant to a state court judgment, § 2254 constitutes his only habeas  
12 remedy for any challenge to his detention, regardless of the nature of such a challenge.”  
13 *Krause v. Stewart*, No. C19-1421-MJP, 2019 WL 6732015, at \*2 (W.D. Wash. Sept. 13,  
14 2019), report and recommendation adopted, No. C19-1421 MJP, 2019 WL 6728740  
15 (W.D. Wash. Dec. 11, 2019); *White v. Lambert*, 370 F.3d 1002, 1009-10 (9th Cir. 2004)  
16 (holding § 2254 was a state prisoner’s exclusive remedy when he sought to challenge  
17 his transfer from a state prison to a privately-run prison in another state).

18 Because petitioner is pro se, the Court will interpret the petition liberally and  
19 therefore, will screen his complaint pursuant to Habeas Corpus Rule 4, of the Rules  
20 Governing Section 2254 Cases in the United States District Courts.

#### 21 **A. Exhaustion**

22 A state prisoner seeking habeas corpus relief in federal court must exhaust  
23 available state remedies prior to filing a petition in federal court. See 28 U.S.C. §  
24  
25

1 2254(b)(1). “[S]tate prisoners must give the state courts one full opportunity to resolve  
2 any constitutional issues by invoking one complete round of the State’s established  
3 appellate review process.” *O’Sullivan v. Boerckel*, 526 U.S. 838, 845 (1999). Claims for  
4 relief that have not been exhausted in state court are not cognizable in a federal habeas  
5 corpus petition. *James v. Borg*, 24 F.3d 20, 24 (9th Cir. 1994). A petitioner must have  
6 fully and fairly raised the same federal claim presented in the federal habeas corpus  
7 petition, at every level of the state courts’ review. *Reutter v. Crandel*, 109 F.3d 575, 578  
8 (9th Cir. 1997).

9 In this case, petitioner fails to show he has exhausted state court remedies.  
10 Petitioner states that “[t]his filing Constitutes Appeal” Dkt. 1-2 at 2, and states “[t]his is  
11 the immediate appeal for the denial to file.” *Id.* at 7. In his prayer for relief petitioner also  
12 requests for this Court to remand this matter to the Burien District Court or, in the  
13 alternative, “to retain supervisory jurisdiction by entering his attempt to exercise his First  
14 Amendment right to seek review in the Burien District Court, of King County.” Dkt. 1-6. If  
15 petitioner seeks to challenge his First Amendment right to access to the courts, this  
16 would not be a challenge to the fact or duration of confinement, and a civil rights action  
17 filed under 42 U.S.C. § 1983 would be the proper avenue for seeking relief. *Preiser v.*  
18 *Rodriguez*, 411 U.S. 475, 489, 499 (1973) (Habeas corpus proceedings are the proper  
19 mechanism for a prisoner to challenge the legality or duration of confinement; a civil  
20 rights action, in contrast, is the proper method of challenging “conditions of . . .  
21 confinement.”).

CONCLUSION

Based on the foregoing discussion, the Court finds the claims raised in this petition appear to be unexhausted, and if they are unexhausted the Court should dismiss without prejudice. The Court orders petitioner to show cause in writing on or before July 5, 2024 why the petition should not be dismissed for failure to exhaust state remedies. Accordingly, the Court instructs the Clerk to re-note the IFP application for July 5, 2024.

Dated this 17th day of June, 2024.



---

Theresa L. Fricke  
United States Magistrate Judge